

United States District Court  
Central District of California

SONIA PEREZ, individually, and on behalf of a class of similarly situated individuals,

Plaintiff,

THE KROGER CO.; and DOES 1-10,

## Defendants.

Case № 2:17-cv-02448-ODW (AGR)

## ORDER DENYING MOTION TO DISMISS AS MOOT [10]

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1 Defendant The Kroger Company served Plaintiff Sonia Perez with a Federal  
2 Rule of Civil Procedure 12(b)(6) motion to dismiss in this case on May 5, 2017. (ECF  
3 No. 10.) Plaintiff filed a first amended complaint on May 26, 2017, twenty-one days  
4 later. (ECF No. 20.) Rule 15(a)(1) allows Plaintiff to file an amended complaint once  
5 as a matter of course within twenty-one days of service with a Rule 12(b) motion.  
6 Therefore, Plaintiff's amended complaint was proper. As the pending motion to  
7 dismiss was based on a complaint that is no longer operative, the motion is **DENIED**  
8 as **MOOT**. *See Ramirez v. Cty. of San Bernardino*, 806 F.3d 1002, 1008 (9th Cir.  
9 2015).

## IT IS SO ORDERED.

May 31, 2017

**OTIS D. WRIGHT, II  
UNITED STATES DISTRICT JUDGE**